Filed 12/12/08 In re M.R. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re M.R. et al., Persons Coming Under the Juvenile Court Law.	
ORANGE COUNTY SOCIAL SERVICES AGENCY, Plaintiff and Respondent, v. CHRISTY L. et al., Defendants and Appellants.	G040365 (Super. Ct. No. DP012023) O P I N I O N

Appeal from an order of the Superior Court of Orange County, John C. Gastelum, Judge. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant Christy L.

Jennifer Mack, under appointment by the Court of Appeal, for Defendant and Appellant David R.

Benjamin P. de Mayo, County Counsel, and Karen L. Christensen, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

* * *

Christy L. and David R. (parents) each appeal from the juvenile court's order terminating their parental rights to their three daughters, 9-year-old M.R., 6-year-old C.R., and 5-year-old L.R., and their one son, 8-year-old J.R. (Welf. & Inst. Code, § 366.26; all statutory references are to this code.) They contend this was error because there was insufficient evidence of adoptability. We find no error and affirm the order.

FACTS AND PROCEDURAL BACKGROUND

In July 2005, Orange County Social Services Agency (SSA) took the children into protective custody after parents were arrested for violating restraining orders against each other and engaging in domestic violence in front of them. The family had been living in a van and the children were "unclean and unkempt."

SSA filed a dependency petition for parents' failure to protect the children from harm, citing the parents' violation of the restraining orders, domestic violence, transient lifestyle, and unresolved substance abuse problems. The court declared the children dependents and ordered reunification services for the parents.

The children were placed together in a foster home. All four adjusted well and were reaching their developmental milestones, although J.R. was behind academically and L.R. had some screaming nightmares when first placed.

Father failed to participate in any part of his case plan and mother was only partially compliant with hers. The court terminated reunification services at the 12-month review hearing and set the matter for permanency hearing under section 366.26.

In April 2007, the court found termination of parental rights would not be detrimental to the children, identified adoption as the permanent placement goal, and found the children would probably be adopted but were difficult to place and that there were no identified or available prospective parents at the time. It ordered efforts be made to locate an appropriate adoptive family within 180 days.

The children's first foster family was not interested in adopting all four siblings. A month after the hearing, the children were placed with a new foster family. All four were "developmentally on-target" and reportedly adjusting well, although when first placed J.R. and C.R cried and L.R. wet the bed at night. The new foster family declined to adopt the children but were willing to care for them until a permanent home could be found.

As of November, an adoptive family had not yet been found. Several out-of-state families had expressed interest in the children but they could not be considered at the time because visitation for the parents remained authorized. The court continued the hearing for another five months.

During that time, J.R. refused to listen to his foster parents and attempted to walk on the second story railing. He was physically aggressive toward others, destroyed property, and twice in one day threatened to jump out of the second story window, requiring the police to be called. He tried again the next day and again the police were called. Despite time in a respite home, J.R. continued to act out physically and was found choking his youngest sister while playing.

A prospective adoptive home was found and in March 2008, J.R. was placed first with his three sisters following a week later. The girls reportedly adjusted well but although J.R. was initially reported to be adjusting well, he continued to "exhibit

behaviors in the home." He had a tantrum in which he scratched, bit, and head-banged his prospective adoptive mother, stating, "you're not my mom" and "I miss my mom." She was able to calm him down and reassure him she was not trying to take his mother's place. J.R. later apologized to her. A few weeks later, J.R. threatened to call the social worker and ask to be moved, but when the prospective adoptive father dialed the number for him, J.R. had nothing to say. That night, J.R. threw things around, was aggressive with his sisters and prospective adoptive mother, and called the prospective adoptive father names. He told them he did not want to be there, did not want them to love him, and that he wanted them to hate him. He also let the cat out of the house and chased it. He later apologized for his behavior. The prospective adoptive parents read books and materials on how to deal with his behavior and he was assigned a new therapist.

At the permanency hearing in May, the court terminated parental rights, finding it likely the children would be adopted and that none of the exceptions to adoption existed. The only concern the court had regarding adoptability was "that it was a sibling set of four, but . . . not[e]d that they have been placed in a prospective adoptive home and . . . [did] not find any information other than the fact that there are four children to suggest [they] would not be adopted."

DISCUSSION

The parents contend the court's finding the children are adoptable is not supported by substantial evidence. They highlight J.R.'s behavioral problems and his membership in a sibling group of four, the oldest of which, M.R., was considered an older and less adoptable child because she was over 7 years old. The contention lacks merit.

At a permanency hearing, SSA must establish a minor is likely to be adopted by clear and convincing evidence. (§ 366.26, subd. (c)(1).) But on appeal, an

adoptability finding is reviewed under the substantial evidence standard. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.)

When determining the issue of a child's adoptability, a court must consider whether factors such as the child's "age, physical condition, and emotional state make it difficult to find a person willing to adopt the [child]. . . . [¶] Usually, the fact that a prospective adoptive parent has expressed interest in adopting the [child] is evidence that the [child's] age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the [child]. In other words, a prospective adoptive parent's willingness to adopt generally indicates the [child] is likely to be adopted within a reasonable time either by the prospective adoptive parent *or by some other family*. [Citation.]" (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650.) It is further recognized that a child who might be considered unadoptable for reasons relating to the child's "age, poor physical health, physical disability, or emotional instability is nonetheless likely to be adopted because a prospective adoptive family has been identified as willing to adopt the child. . . ." (*Id.* at p. 1650.)

Here, the prospective adoptive parents were interested in adopting all four children despite M.R.'s older age and J.R.'s behavioral problems. Each time J.R. acted up, they were able to calm him down and later he apologized to them. They were also being proactive in learning how to deal with his behavior. Thus, M.R.'s age and the mere existence of J.R.'s behavioral problems did not preclude the juvenile court from finding the children were likely to be adopted. (*In re Lukas B.*, *supra*, 79 Cal.App.4th at p. 1154.)

But the court did not rely solely on the prospective adoptive parents' willingness to adopt, as the parents assert. Rather, it also "read, considered and accepted into evidence" the permanency hearing reports, which described the children as "present[ing] many adoptable characteristics." According to these reports, the children are "developmentally on-target" and were "well-behaved, [and] well-liked . . ., with no

medical, behavioral, or developmental concerns." The three oldest were doing well in school and the youngest was doing well in day care. M.R. was outgoing and liked to read, color, and play handball and tetherball. J.R. was "shy, somewhat guarded, quiet, and loves Hot Wheels." Both liked playing with their friends and interacting with their siblings. C.R. was described as "content, enthusiastic . . ., happy, [and] smiling[, although] shy at first." L.R. similarly was "verbal, happy, smiles, outgoing[, and] friendly." The reports constituted competent evidence to support the juvenile court's findings. (§ 281; *In re Keyonie R.* (1996) 42 Cal.App.4th 1569, 1571-1573.) Unlike in *In re Kristin W.* (1990) 222 Cal.App.3d 234, 253, cited by father, the social worker's opinion was neither conclusory nor the only evidence of adoptability, given the prospective adoptive parents' interest in adopting the children.

Mother maintains the record lacked information about the prospective adoptive family and whether a home study had been completed, and that the children had been placed with them for less than six weeks after an approximate year-long search. But a prospective adoptive parent's general suitability to adopt is not at issue during the permanency hearing. (*In re Scott M.* (1993) 13 Cal.App.4th 839, 844, modified by *In re Sarah M., supra*, 22 Cal.App.4th at p. 1650.) That question is "reserved for the subsequent adoption proceeding." (*Ibid.*) Moreover, because this is not a case where the children were deemed adoptable "based solely on a particular family's willingness to adopt" (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1232; see also *In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061), we reject mother's contention it was necessary for the juvenile court to determine whether there was a legal impediment to adoption.

In sum, we conclude there was sufficient evidence to support the court's finding of adoptability.

DISPOSITION

The order is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

MOORE, J.